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Robert R. Corbin

September 14, 1984

The Honorable Jim Skelly
Arizona State Representative
State Capitol, House Wing
1700 West Washington
Phoenix, Arizona 85007

Re: 184-125 (R84-164)

Dear Representative Skelly:

You have asked whether voter approval of a proposed amendment to the Arizona Constitution will abrogate existing laws pertaining to the terms and conditions of employment of teachers and restrict the power of the legislature to enact such laws in the future. Senate Concurrent Resolution 1012 ("S.C.R. 1012") proposes to amend the Constitution by adding Article XXVIII. If approved by the voters, Article XXVIII would prohibit strikes by public employees and limit the methods and procedures for determining compensation, hours and conditions of employment of public employees. Section 3 of the proposed amendment provides, in pertinent part, as follows:

No public employer may use or agree to a method or procedure for determining the compensation, hours and conditions of employment of its employees, including binding interest or grievance arbitration, which prohibits the governing board of the public employer from disapproving or altering such determinations by a simple majority of those members present and voting. Except for this prohibition, all other decisions regarding methods or procedures for determining the compensation, hours and conditions of

employment of public employees are reserved to and are to be made by the governing board of their public employer.

(Emphasis added). You are concerned that the second sentence of Section 3 pertaining to decisions "regarding methods or procedures for determining the compensation, hours and conditions of employment," may preclude the legislature from enacting laws which govern employment of teachers and abrogate existing laws pertaining to the terms and conditions of their employment.¹ For the reasons set forth below, we believe that the legislature intended that Section 3 would be narrowly applied and limited to the power of a governing board of a local school district to make decisions regarding methods and procedures for negotiating and resolving disputes between the public employer and the public employee or employee representatives. If approved, Article XXVIII would not abrogate the legislature's power to enact laws which regulate the terms and conditions of employment of public school teachers in Arizona by rendering that authority the exclusive power of local governing boards.

It has long been the law in Arizona that school boards have only the authority granted to them by statute and must act within the limits of the power conferred upon them by the Arizona legislature. School District No. 69 of Maricopa County v. Altherr, 10 Ariz.App. 333, 458 P.2d 537 (1969); Campbell v. Harris, 131 Ariz. 109, 638 P.2d 1355 (App. 1981). The legislature's power to regulate terms and conditions of teacher employment is derived, in part, from Art. XI, § 1 ("Article XI") which provides, in pertinent part, as follows:

The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system

Section 3 of proposed Article XXVIII must be interpreted in light of Article XI since the Constitution must be construed as a whole and its various parts must be read together. Kilpatrick v. Superior Court In and For Maricopa

1. As it is used in Section 3, "public employer" includes a local school district governing board. Section 4.

County, 105 Ariz. 413, 466 P.2d 18 (1980); State Ex Rel Morrison v. Nabours, 79 Ariz. 240, 286 P.2d 752 (1955); Clark v. Boyce, 20 Ariz. 544, 185 P. 136 (1919). An interpretation of Section 3 of proposed Article XXVIII which would vest in each local school board exclusive control over matters relating to compensation, hours, and conditions of employment would thwart the goal of Section 1 of Article XI which authorizes the legislature to enact the necessary laws to ensure a uniform system of providing public education throughout Arizona.^{2/}

We must also look to the plain language of Section 3 of proposed Article XXVIII. See Down v. Sulphur Springs Val. Elec. Co-op, Inc., 80 Ariz. 286, 297 P.2d 339 (1956). In this regard, we note that the second sentence of Section 3 specifically uses the phrase "all other decisions regarding methods or procedures for determining the compensation, hours and conditions of employment" rather than "all other decisions regarding the compensation, hours and conditions of employment." Had the legislature intended to propose a constitutional amendment which would eliminate its authority to regulate the terms and conditions of teacher employment, it would have omitted the phrase "methods and procedures for determining" in drafting its resolution.

Constitutional provisions are interpreted in view of the history behind the enactment, the purpose sought to be accomplished by the enactment and the evil sought to be remedied. Ruth v. Industrial Commission, 107 Ariz. 527, 490 P.2d 828 (1971). Constitutions are to be construed in light of exigencies and conditions which they are intended to meet and deal with. Kerby v. Luhrs, 44 Ariz. 208, 36 P.2d 549 (1934). Article XXVIII is specifically designed to ensure that management decisions are made by the employer, rather than delegated to a third party or coerced by strikes. When the second sentence of Section 3 is read in context with the entire text of the proposed amendment, it becomes abundantly clear that the language "methods or procedures for determining" pertains to negotiations and communications between a public employer and employees or their representatives concerning

2. We also note that for some purposes the State of Arizona has assumed the role of "employer" for the state's teachers. See e.g. A.R.S. § 38-745.

"compensation, hours and conditions of employment." This conclusion is further bolstered by reading the first and second sentences of Section 3 together. The first sentence of Section 3 in referring to "method or procedure for determining compensation, hours and conditions of employment" provides, as specific examples, "binding interest or grievance arbitration."

Our Supreme Court has directed that constitutional provisions should not be given a construction that will nullify legislation, but, rather, those provisions must be liberally construed to uphold legislation. New Times, Inc. v. Arizona Board of Regents, 110 Ariz. 367, 370, 519 P.2d 169, 172 (1974). An interpretation of Article XXVIII which would give local governing boards the exclusive power to determine all terms and conditions of teacher employment would nullify not only long standing laws pertaining to teacher employment, but also a number of laws enacted by the same legislature that generated S.C.R. 1012. For instance, the 36th Arizona legislature enacted a variety of laws which regulate the compensation, hours and conditions of employment of teachers by local governing boards. See e.g. Ch. 52, 1984 Ariz.Sess.Laws (2nd Reg. Sess.) (part-time teacher tenure); Ch. 115, 1984 Ariz.Sess.Laws (2nd Reg. Sess.) (teacher tenure); Ch. 178, 1984 Ariz.Sess.Laws (2nd Reg. Sess.) (teacher experience ladders); Ch. 194, 1984 Ariz.Sess.Laws (2nd Reg. Sess.) (fringe benefits provided to teachers); and Ch. 297, 1984 Ariz.Sess.Laws (2nd Reg. Sess.) (teacher performance evaluation systems). A construction of Article XXVIII which, if adopted, would eliminate the legislature's authority to regulate conditions of teacher employment contradicts the fact that the very same legislature enacted numerous laws pertaining to the compensation, hours and conditions of employment of teachers. That is, the legislature would not have so painstakingly adopted these provisions had it intended that Article XXVIII, if adopted, would nullify these laws.

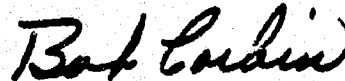
In interpreting any ambiguity, we may also look to the language of the publicity pamphlet circulated by the Secretary of State prior to the election to inform qualified electors of the effect of the adoption of particular referendum measures. American Bus Lines, Inc. v. Arizona Corp. Com'n., 129 Ariz. 595, 633 P.2d 404 (1981). The pamphlet which pertains to the November 6, 1984, general election lists the effect of the approval of adding Article XXVIII to the Constitution. Nowhere

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in that pamphlet is there any representation that the adoption of Article XXVIII would result in the abrogation of the power of the legislature to enact laws providing for a uniform system for employment and compensation of teachers throughout the state.

In summary, we do not think that Section 3 of proposed Article XXVIII, if approved, would give local district governing boards the exclusive power to determine compensation, hours, and conditions of employment. That power resides with the state legislature in an effort to ensure a uniform system of providing public education throughout the state. Rather, Section 3 applies only to the narrow area of determining methods and procedures for dealing with public employees or their representatives in determining wages, hours and compensation.

Sincerely,



BOB CORBIN
Attorney General

BC:SMS:kmc